Supreme Court, U.S.
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No. 06-

IN THE

Supreme Court of the United States

MAULDING DEVELOPMENT, LLC,

Petitioner,

v.

CITY OF SPRINGFIELD, ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Seventh Circuit's opinion overlooks significant evidence of discrimination, sufficient to sustain a claim of "class of one" discrimination, as established by this Court's opinion in *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

CORPORATE DISCLOSURE STATEMENT

Maulding Development, LLP is an Illinois limited liability company. There is no parent or publicly held company owning ten percent or more of Maulding Development, LLP.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Maulding Development, LLC, respectfully petitions for a writ of *certiorari* to review the judgment of the Court of Appeals for the Seventh Circuit.

OPINION BELOW

The opinion of the Seventh Circuit is reported at 453 F.3d 967 (2006), and is reproduced in Petitioner's Appendix A at page 1a.

STATEMENT OF JURISDICTION

Jurisdiction is invoked pursuant to 28 U.S.C. 1245(1). The judgment of the Seventh Circuit was entered on July 18, 2006.

CONSTITUTIONAL PROVISIONS INVOLVED

14th Amendment, Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Maulding filed a four count complaint against the City of Springfield and its aldermen.

Maulding is a real estate developer, and had plans to build warehouses for rent on Wabash Avenue, on the West side of Springfield. This project will be referred to as the West side project.

Maulding reached agreement with the city on an Economic Development Agreement for the West side project, which included $199,000 in Community Development Block Grant (CDBG) funds. At one point in the development process, Alderman McNeil, an African American alderman from Springfield's East side, suggested that CDBG dollars would be better spent on the East side where a majority of the African American population, and a significant portion of Springfield's working class, live.

Maulding agreed. He located a site on the East side and submitted development plans for a warehouse project on that site. For consistency's sake, this will be referred to as the East side project.

Maulding presented final development plans for the East side project which met all requirements imposed by Springfield city code. Nevertheless the City Council rejected those plans.

Faced with that rejection, Maulding returned to his West side project. He presented final development plans for that project which again met all technical requirements of Springfield city code. The City Council once again rejected those plans.

Maulding filed a four count complaint. One count sought damages on a "class of one" theory on the East side project – the claim which is now before this Court. One count sought damages for breach of the Economic Development Agreement on the West side project. Two counts sought mandamus relief – seeking court-ordered issuance of approval of the development plans for the East and West side projects.

The District Court granted Maulding's Motions for Summary Judgment on the two mandamus counts. The Court found that both sets of plans did meet all technical requirements of city code, found that the approval by the Council was a non-

discretionary ministerial act, and that the Council had no reason to withhold approval from either set of plans. The District Court's order granting two writs of mandamus is included in Appendix C at page 21a.

The District Court then granted the City's Motion for Summary Judgment on Maulding's "class of one" claim. The order of the District Court is included in Appendix B at page 9a.

The Seventh Circuit affirmed the District, dismissing as insufficient the admission in a City Council meeting that the city was treating Maulding differently than it had ever treated any other developer who had submitted development plans which met all technical requirements.

REASONS FOR GRANTING THE PETITION

Maulding Presented Sufficient Evidence of a "Class of One" Violation to Withstand a Motion for Summary Judgment.

Village of Willowbrook v. Oleck, 528 U.S. 562 (2000) is perhaps one of the shorter opinions issued by this court. This Petition, based on *Village of Willowbrook*, will likewise be one of the more brief petitions submitted to this Court.

In *Village of Willowbrook*, Mrs. Olech presented a very simple claim. The Village demanded easements from residents who wished to connect to the municipal water supply. They demanded a 33 foot easement from the Olechs, while demanding a 15 foot easement from all others. The Olechs further alleged the Village acted with ill will because of previous litigation. This Court held that those facts were sufficient to support a "class of one" violation.

In this case, Maulding presented uncontroverted evidence that the City Council had never before refused to approve development plans for any project which met all technical requirements of the City Code. Maulding presented evidence of an admission by a council member that the Council was doing something it had never done before, an admission sloughed off the Seventh Circuit (Maulding's claim is doomed because of the total lack of evidence . . ." (Appendix A at page 5a.)

What better evidence could there be of disparate treatment of one developer in contrast to all other developers than an admission by a council member that they were doing that which had never been done before? Certainly, that is sufficient evidence to withstand a Motion for Summary Judgment.

In addition to that rather startling fact, which seems to be sufficient to meet the *Village of Willowbrook* test standing alone, Maulding also established that its project was within a Tax Increment Finance District, which contemplated commercial development, specifically warehouse development, within the District.

Maulding also established that the City, for the first time ever, allowed by a variance residential development in an otherwise commercial and industrial development. The majority of objectors to Maulding's project live in those houses, built on industrial zoned property, by reason of variance granted by the Council.

Maulding also presented rather disturbing evidence of racially-motivated remarks against its principal – a white male – by the objectors to this project in the presence of two or three (of the ten) Springfield aldermen. Mr. Maulding, the white male principal of Maulding Development, was likened, among other references, to the mythical Jim Crow – he of the Jim Crow laws.

The simple fact that the City of Springfield treated Maulding differently than any other developer – by rejecting plans which met all technical requirements – is certainly enough to raise a genuine issue of material fact under the *Village of Willowbrook* standard.

That unprecedented denial, combined with the potential that Maulding was denied because it was a company owned by a white male, building on land surrounded by African American homeowners – who likened Maulding to Jim Crow – was certainly sufficient to raise a genuine issue of material fact, precluding summary judgment in favor of the City.

CONCLUSION

For all the foregoing reasons, Maulding requests this Court grant review of this matter.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DECIDED JULY 18, 2006

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 05-1626

MAULDING DEVELOPMENT, LLC,

Plaintiff-Appellant,

v.

CITY OF SPRINGFIELD, ILLINOIS, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of Illinois.
No. 04 C 3075—**Jeanne E. Scott**, *Judge*

ARGUED JANUARY 4, 2006—DECIDED July 18, 2006

Before CUDAHY, RIPPLE, and KANNE, Circuit Judges.

KANNE, *Circuit Judge*. Maulding Development, LLC ("Maulding") convinced the district court to issue a writ of mandamus ordering the City of Springfield, Illinois and related City officials (the "City") to approve two warehouse development plans Maulding had submitted. Maulding

simultaneously sought to recover damages it suffered due to the delay in garnering the approval for one of the plans. The district court was unconvinced, however, with respect to damages and granted summary judgment to the City on this issue. Maulding (but not the City) appeals, and we affirm.

I. HISTORY

Maulding Development is a real estate development company owned and operated by David Maulding ("Mr. Maulding"), a Caucasian male. Maulding wanted to build warehouses on the west side of Springfield. Maulding submitted a development plan to the City. Before giving final approval, the City agreed to the preliminary issues of Maulding's variance requests and its proposed Economic Development Agreement. At some point during the planning stage, certain African-American City officials asked Maulding to consider relocating its warehouse project to the east side of Springfield in an area with a significant African-American population. Maulding agreed. Maulding then performed the necessary legwork and submitted a plan to the City for a warehouse development project on the east side. The plan met all of the technical requirements for this type of project and no variances were necessary.

Generally, when voting on whether to approve a proposed development, the aldermen on the City Council will defer to the alderman of the ward in which the proposed development is to be located. For the east side plan, that would be Alderman Frank Kunz, one of the original officials who approached Maulding about relocating its warehouse project. After Maulding submitted its plan for the new location, Kunz

told Mr. Maulding he would vote to approve the plan. Because the other aldermen would follow Kunz's lead, the plan was set for approval, according to Maulding.

Unfortunately for Maulding, the neighbors to the proposed development site on the east side subsequently objected to its plan. The opponents live in a residential neighborhood that is situated on land zoned for industrial use (which is why Maulding needed no variance for the new location). The developer of the neighborhood had obtained a zoning variance to permit the building of these homes; this was originally done as part of a redevelopment project.

As the City was considering Maulding's new plan (and presumably due to the neighbors' objections), a public meeting was held between Mr. Maulding and residents from the east side of the City. Kunz and two other aldermen also attended. The meeting did not go well for Mr. Maulding, as he was verbally attacked with racial slurs. Without going into detail, suffice it to say some residents were quite vocal in their belief that he was a racist. Kunz and the other aldermen present said nothing, nor did they acknowledge or in any other way signify their agreement with the residents' opinions.

Sometime later, the matter came before the City Council for a vote. Some east side neighbors attended and voiced their objections, while Mr. Maulding spoke in favor of both projects. The city council denied both the east and west side plans, 10-0, citing public safety concerns. At the time of the vote, Kunz noted the City had never before denied approval for development plans that met all of the technical requirements.

Maulding then filed suit in the district court. The court issued a writ of mandamus ordering the City to approve both plans, as the approval of a development plan that met all technical requirements was a ministerial act, as opposed to a discretionary one.[1] Maulding also raised a "class of one" equal protection claim, alleging the City's failure to approve the east side plan was on account of Mr. Maulding's race. The district court granted summary judgment for the City, finding no evidence of similarly situated entities and no evidence of racial animosity on the City's part.

II. ANALYSIS

We review a district court's grant of summary judgment de novo. *Jordan v. City of Gary, Ind.*, 396 F.3d 825, 831 (7th Cir.2005) (citation omitted). Summary judgment is appropriate if "'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Fed.R.Civ.P. 56(c)); *Ezell v. Potter,* 400 F.3d 1041, 1046 (7th Cir.2005) (citation omitted); *see Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

Maulding has based its "class of one" claim on 42 U.S.C. § 1983, arguing the City violated its equal protection rights under the Fourteenth Amendment. We "ha[ve] recognized equal protection claims brought by a 'class of one,' although

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1. This decision of the district court is not before us, as the City did not appeal.

we have acknowledged that it is difficult to succeed with such a claim." *McDonald v. Vill. of Winnetka,* 371 F.3d 992, 1001 (7th Cir.2004) (citation omitted). To establish its "class of one" claim, Maulding must show (1) it has been intentionally treated differently from others similarly situated; and (2) there is no rational basis for the difference in treatment or the cause of the differential treatment is a "totally illegitimate animus" toward Maulding by the City. *See Vill. of Willowbrook v. Olech,* 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000) (per curiam); *Nevel v. Vill. of Schaumburg,* 297 F.3d 673, 681 (7th Cir.2002).[2]

Maulding's claim is doomed because of the total lack of evidence of someone who is similarly situated but intentionally treated differently than it. This type of evidence is required because "[d]ifferent treatment of dissimilarly situated persons does not violate the equal protection clause." *E & T Realty v. Strickland,* 830 F.2d 1107, 1109 (11th Cir.1987); *see Olech,* 528 U.S. at 564, 120 S.Ct. 1073. The only evidence Maulding points to on appeal is the statement made by Alderman Kunz. Kunz admitted during the City Council meeting that the City was doing something it had

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2. Maulding makes no mention of the "no rational basis" approach, and bases its claim only on the allegation that the City acted with an "improper purpose," namely that the City rejected Maulding's plan because it was owned and managed by a Caucasian male. Therefore, we need not address the question of exactly what a plaintiff must demonstrate to support the second element of a prima facie class-of-one equal protection claim. *See Ind. Land Co. v. City of Greenwood,* 378 F.3d 705 (7th Cir.2004); *Tuffendsam v. Dearborn County Bd. of Health,* 385 F.3d 1124 (7th Cir.2004); *Racine Charter One, Inc. v. Racine Unified Sch. Dist.,* 424 F.3d 677 (7th Cir.2005).

never done before, namely that it was denying the approval of a large scale development plan that met all technical requirements. The only argument Maulding makes is that it is one of a group of developers seeking approval of large scale development plans, they all submitted plans that met the City's technical requirements, and all were approved except Maulding's.

"There is no precise formula to determine whether an individual is similarly situated to comparators." *McDonald,* 371 F.3d at 1002 (citing *Barrington Cove, LP v. R.I. House & Mortgage Fin. Corp.,* 246 F.3d 1, 8 (1st Cir.2001)). "However, a court may properly grant summary judgment where it is clear that no reasonable jury could find that the similarly situated requirement has been met." *Id.* (citing *Harlen Assoc. v. Vill. of Mineola,* 273 F.3d 494, 499 n. 2 (2d Cir.2001); *Bell v. Duperrault,* 367 F.3d 703, 709-10 (7th Cir.2004) (affirming district court's grant of summary judgment where the plaintiff failed to raise a triable issue as to whether he was "similarly situated" to comparators); *Purze v. Vill. of Winthrop Harbor,* 286 F.3d 452, 455-56 (7th Cir.2002) (same)). We have imposed on plaintiffs a "high burden" in establishing someone who is similarly situated in these types of cases. *Id.* at 1003 (citing *Bell,* 367 F.3d at 708-09 (individuals were not similarly situated in a "class of one" equal protection case where individuals submitted applications for pier extensions at different times, requested different extensions, or requested to replace existing structures rather than build new ones); *Purze,* 286 F.3d at 455 (individuals were not similarly situated in a "class of one" equal protection case where the individuals submitted different variances than the plaintiff requested, submitted

their plats during different time periods, or had requests granted by different and previous Boards)); *see Racine Charter One,* 424 F.3d at 680 (finding that "[t]o be considered 'similarly situated,' comparators must be prima facie identical in all relevant respects") (citations and quotations omitted).

To survive summary judgment, it is Maulding's burden to produce evidence showing a dispute of a material fact. Maulding introduces no evidence regarding any of the other developers, not a single one.[3] Maulding, relying on the statement of the alderman, makes it sound as if there are many to choose from. Maybe there are, maybe there aren't. Common sense tells us there were probably other developers who submitted plans to the City that were approved. But there is no evidence in the record that would even establish this basic fact. Even assuming other plans were submitted to the City, how can we (or a jury) compare them to Maulding's plan? There is no evidence whatsoever to make such a comparison. There is no evidence establishing whether these other plans involved warehouses, or any type of commercial property for that matter. There is no evidence establishing whether these other plans involved commercial property that, if developed, would abut already existing residential areas. There is no evidence establishing whether these other plans involved the development of a new commercial area, or were simply a redevelopment of a preexisting site. Furthermore,

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3. Maulding submitted evidence to the district court of an African-American developer who was considering a warehouse development in Springfield. That particular developer submitted plans to the State of Illinois, as opposed to the City. Maulding has abandoned this evidence on appeal, as it makes no mention of this developer in its argument concerning similarly situated developers.

there is no evidence regarding the timing of these alleged other plans, such as whether they were submitted to the same or different members of the City Council, or even whether they were submitted in the last five (or fifty) years. Finally, there is no evidence establishing that the other plans did not seek variances, like Maulding's. *See Purze,* 286 F.3d at 455-56 (explaining that projects which seek different types of variances are not similarly situated).

"A showing that two projects were similarly situated requires some specificity." *Campbell v. Rainbow City, Alabama,* 434 F.3d 1306, 1314 (11th Cir.2006) (citations omitted); *Racine Charter One,* 424 F.3d at 680. Maulding's sweeping argument that it was "treated [ ] differently than any other developer has ever been treated," with no evidentiary support, has no specificity. As the City argues, "All developers are not identical, all plans are not identical, and all developments are not identical." To the extent the City means "similarly situated" as opposed to "identical," we could not agree more, and the district court was correct in determining that Maulding had not introduced any evidence of similarly situated developers. Therefore, we Affirm the judgment of the district court.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B — ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION FILED FEBRUARY 22, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

No. 04-3075

MAULDING DEVELOPMENT, LLC,

Plaintiff,

v.

CITY OF SPRINGFIELD, et al.,

Defendants.

ORDER

JEANNE E. SCOTT, U.S. District Judge:

This matter comes before the Court on Defendant City of Springfield, Illinois' (City) Motion for Summary Judgment and Dismissal (d/e 28). Plaintiff Maulding Development, LLC (Development) alleges in Count I of its Complaint that the City denied Development its right to equal protection by refusing to approve a warehouse development proposal in an area of the City called South Grand Pointe. Development alleges that the City treated it differently than a similarly situated developer because Development's principal and

manager is a Caucasian man. The City moves for summary judgment on this claim. For the reasons set forth below, the City's Motion is allowed.

STATEMENT OF FACTS

In 1994, a group called East Park Joint Venture submitted a proposal to the City for a redevelopment project called South Grand Pointe Project on the east side of Springfield, Illinois. *Plaintiff's Motion for Summary Judgment on Count I (d/e 21) (Plaintiff's Summary Judgment Motion)*, Exhibit C.[1] The Proposed South Grand Pointe Project contemplated a mixed-use development of 91.5 acres on the east side of Springfield that would include residential, commercial, service, office and warehousing uses. *Id.* On February 23, 1995, the City approved an ordinance establishing the Far East Side Tax Increment Redevelopment Plan and Redevelopment Project (TIF District). *Movant's Reply to Plaintiff's Response to Motion for Summary Judgment Count I (die 36) (Reply),* Exhibit C. The TIF District covered a 300 acre tract which included the South Grand Pointe area. *Id.* at 36.[2]

On August 20, 1996, the City authorized a zoning variance to allow construction of a development of 61 single-family residences in part of South Grand Pointe. South Grand Pointe was zoned for industrial use, and the variance allowed

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1. Plaintiff subsequently withdrew this Motion. Text Order entered November 3, 2004.

2. The page number refers to the handwritten page number at the lower right-hand corner of the pages of the exhibit.

a residential development. *Reply,* Exhibit D. Pitgam Enterprises, Inc. (Pitgam) planned to build a residential development in South Grand Pointe on the west side of Eastdale Avenue. Eastdale Avenue runs north and south through South Grand Pointe. Michael Pittman is an African-American man and is the head of Pitgam. On May 3, 1999, the City approved financing from the TIF District for Pitgam's residential development. *Defendant's Motion for Summary Judgment and Dismissal (d/e 28) (Defendant's Motion),* Exhibit A. The residential development became known as Eastview Estates. *Id.*, Exhibit N, *Audio Recordings of May 20, 2003, City Council Meeting, tape no. 2, Statement of Sandy Robinson.*

Pittman also considered developing a warehouse project at South Grand Pointe. Pittman submitted a warehouse proposal to the state of Illinois, but the state did not approve the proposal. After the state rejected the proposal, Pittman never submitted the warehouse proposal to the City.

In 2002, Development proposed building a warehouse development on the west side of the City. David Maulding is the manager and principal of Development. He is a Caucasian man. In June 2002, David Maulding attended a meeting with several individuals, including at least two aldermen and the City's Director of Economic Development. At the meeting, David Maulding was asked to consider building the warehouse development on the east side of Springfield. The South Grand Pointe area was one of the possible sites mentioned in these discussions. Development then submitted a large-scale development plan to the City to build a warehouse project (the Project) in the South Grand Pointe

area on the east side of Eastdale Avenue, across from Eastview Estates. *Amended Response to City's Motion for Summary Judgment (Count 1, Equal Protection) (d/e 35) (Plaintiff's Response)*, Exhibit C, *Sworn Statement of William A. Maulding, Jr.*

A meeting was subsequently held at a local church to discuss the Project with members of the community. City Aldermen Frank Kunz, Frank McNeil, and Roderick Nunn were present at the meeting. At the meeting, some members of the community opposed construction of the Project across from Eastview Estates. David Maulding stated at the meeting that he would not want the Project built next to where he lived, but added that "he would not expect a developer not to develop on commercial property if he was the one negligent to build next to commercial property." *Id.* attached *Sworn Statement of Artie Marshall.*

Some of the members of the public present at the meeting accused David Maulding of being in favor of Jim Crow laws, segregation in public places and uses, and being in favor of the 18th century notion that an African-American counted for only 3/5th of a white man. None of the three aldermen responded to these comments at the meeting. Kunz stated at the meeting that he had told David Maulding he would not vote against this Project because he did not want to put the City in danger of another law suit. *Plaintiff's Summary Judgment Motion,* Exhibit A, *Affidavit of David Maulding; Plaintiff's Response*, Exhibit A, *Supplemental Affidavit of David Maulding*, and attached *Sworn Statements of Aaron Lindberg and Artie Marshall.*

Appendix B

David Maulding also met with the Mayor's then-Chief of Staff Letitia Dewith Anderson, the City's Director of the Department of Community Relations Sandy Robinson, and an individual named Linda Shanklin. Robinson and Shanklin accused David Maulding of not caring about the financial impact of the Project on middle-class black homes in the area on the City's east side. Robinson stated that he did not oppose Pittman's warehouse proposal because it was smaller than Development's, although he had never seen Pittman's proposal. *Plaintiff's Response*, Exhibit B, *Affidavit of Letitia Dewith Anderson.*

David Maulding also discussed the Project with aldermen Chuck Redpath, Frank McNeil, and Frank Kunz. Redpath told him that when voting on whether to approve a proposed development, aldermen will defer to the alderman of the ward in which a proposed development is to be located. The Project was to be built in Kunz's ward. Kunz told David Maulding that he would vote for the Project as long as no variances from City code were required. None were required. David Maulding states in his affidavit that Alderman McNeil also promised to vote for the Project. *Plaintiff's Response*, Exhibit A, *Supplemental Affidavit of David Maulding.*

The three ordinances, needed to approve the Project, came before the City Council for final passage on May 20, 2003. The City Council is made up of ten aldermen and the Mayor. The Project met all technical requirements and complied with all zoning and other applicable ordinances. David Maulding spoke in favor of the Project. Residents of Eastview Estates, Pittman, and others spoke against the Project because of the impact on Eastview Estates. The Board

of Alderman voted down all three ordinances needed to approve the Project by votes of 10 nos and 0 yeas. *Defendant's Motion*, Exhibit M, *Minutes of May 3, 2003, City Council Meeting*; Exhibit N, *Audio Recording of May 3, 2003 City Council Meeting, tape nos. 2 and 3.*

Development then brought this action against the City. Count I of the Complaint alleges that the City Council violated its right to equal protection by rejecting the Project. Development's Complaint also includes three state law counts for mandamus and specific performance.

ANALYSIS

The City moves for summary judgment on Count I. At summary judgment, the City must present evidence that demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323-24 (1986). The Court must consider the evidence presented in the light most favorable to Development. Any doubt as to the existence of a genuine issue for trial must be resolved against the City. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986). Once the City has met its burden, Development must present evidence to show that issues of fact remain with respect to an issue essential to its case, and on which it will bear the burden of proof at trial. *Celotex Corp.,* 477 U.S. at 322; *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986).

Development claims that the City violated its right to equal protection. At summary judgment, Development has the burden of presenting evidence on each element of its

prima facie case. Development could proceed on either a racial discrimination theory or a "class-of-one" theory. Under the "class-of-one" theory, Development must present evidence: (1) that the City treated it differently than others similarly situated; and (2) did so with the irrational, purposeful intent to treat Development worse than those similarly situated. *Tuffendsam v. Dearborn County Bd. of Health,* 385 F.3d 1124, 1127 (7th Cir. 2004); *McDonald v. Village of Winnetka,* 371 F.3d 992 (7th Cir. 2004); *Purze v. Village of Winthrop Harbor,* 286 F.3d 452, 455 (7th Cir. 2002). Under a racial discrimination theory, Development must present evidence that the City treated it differently than persons from other races and did so purposefully. *Billings v. Madison Metropolitan School Dist.,* 259 F.3d 807, 812 (7th Cir. 2001). Either theory requires evidence that: (1) the City treated Development differently from others similarly situated; and (2) improper intent. Development has no evidence on the first element and mere speculation on the second.

Development has presented no evidence that the City treated it differently from any other similarly situated entity or individual, regardless of race. A similarly situated person must be *prima facie* identical in all relevant respects. *Purze,* 286 F.3d at 455. Development has not identified any similarly situated person or entity. Development points to Pittman, but he is not similarly situated because he did not submit a similar development proposal to the City. The City approved a residential development proposed by Pittman's development

group, not a commercial warehouse development.[3] The two developments are not comparable.

In addition, Pittman submitted a warehouse development proposal to the state, but not to the City. The City never voted on Pittman's warehouse development proposal, so the City could not have treated him more favorably with respect to that proposal. Development, therefore, has presented no evidence on the first element of either the class-of-one theory or the racial discrimination theory. "[A] complete failure of proof concerning an essential element of the [nonmovant's] case necessarily renders all other facts immaterial." *Purze,* 286 F.3d at 454, *quoting Celotex Corp.,* 477 U.S. at 323. The City is entitled to summary judgment.

Moreover, Development has presented little more than speculation concerning the City's intent. Development claims that the City intentionally rejected the Project because its principal and manager is a Caucasian man. The City is a municipality. To establish municipal liability, Development must present evidence that the damage resulted from the governmental policy or custom, or from an action by the person with final policy-making authority. *Kujawski v. Board*

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3. The City Council also approved financing of Pittman's development in 1999. The City Council had a different make-up at the time; Karen Hasara was Mayor rather than Timothy Davlin. *See Defendant's Motion,* Exhibit A. The Mayor is a voting member of the City Council. Some of the Aldermen may also have changed, but the evidence before the Court does not address this point. A third party is not similarly situated if the body making the decision affecting the third party had a different make-up from the body that made the decision affecting the plaintiff. *Purze,* 286 F.3d at 455.

of Com'rs of Bartholomew County, Ind., 183 F.3d 734, 737 (7th Cir. 1999). The City Council is the body with the final policy-making authority in this case. Thus, Development must present evidence that the Council members acted with improper intent; evidence concerning the intent of members of the community or lower level City officials, such as Director Robinson, is not sufficient to impose municipal liability.

Development claims the following circumstantial evidence shows that the City Council acted with improper intent: (1) at least two aldermen attended a meeting in which David Maulding was asked to consider building the Project on the east side of the City, and the South Grand Pointe area was mentioned as a possible site; (2) the South Grand Pointe area is in Alderman Kunz's ward; (3) when voting on whether to approve a proposed development, aldermen will defer to the alderman of the ward in which a proposed development is to be located; (4) Kunz initially told David Maulding that he would vote for the Project, and admitted at the public meeting that he said that he would vote for the Project; (5) McNeil also told David Maulding that he would vote for the Project; (6) at the public meeting, members of the community personally attacked David Maulding with racial slurs; (7) McNeil and Kunz were at the meeting and said nothing; (8) sometime after the meeting, Kunz and McNeil decided to vote against the Project; and (9) the other aldermen deferred to Kunz and voted against the Project.[4] Development

4. The City has submitted affidavits in which each alderman has stated that he or she opposed the Project out of public safety concerns. Development argues that the affidavits are conclusory and

(Cont'd)

says that circumstantial chain indicates that Kunz changed his mind because of the racial slurs made at the public meeting, and the rest of the aldermen went along. It argues that this evidence, at least, creates an issue of fact regarding whether the City Council voted against the Project because of David Maulding's race.

That analysis is faulty. Development makes a speculative leap that Kunz changed his mind because of the racial slurs made by members of the community at a public meeting. Development has no evidence of any causal connection other than the fact that one event followed another. The sequence of events, alone, is insufficient to show a causal connection necessary to overcome summary judgment. *Buie v. Quad/ Graphics, Inc.*, 366 E.3d 496, 506-07 (7th Cir. 2004); *see Push v. City of Attica, Indiana,* 259 F.3d 619, 630 (7th Cir. 2001) (timing alone not sufficient to show pretext).

Kunz could have just as easily been swayed to oppose the Project because of the negative effect on the homes built since 1996 in the adjacent housing development; even David Maulding stated publicly that he would not want the Project built across from his house. A desire to protect a residential neighborhood from commercial development reflects neither an improper racial motivation nor an irrational intent to make

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(Cont'd)

self-serving and lack any evidentiary value. The Court does not consider the affidavits in reaching its decision in this case because the Court must view the evidence in the light most favorable to Development. If Development actually had evidence of improper motive, the affidavits would only create an issue of fact rather than entitle the City to summary judgment.

Development worse off. This interpretation of the evidence is just as likely as Development's hypothesis, and both are pure conjecture. To overcome summary judgment, Development must present more than speculation; it must have evidence. *McDonald,* 371 F.3d at 1001. Development has none.

The City is entitled to summary judgment on Count I of the Complaint. The Court declines to exercise supplemental jurisdiction over the remaining state law claims and so dismisses the remainder of the Complaint.

THEREFORE, Defendant City's Motion for Summary Judgment and Dismissal (d/e 28) is ALLOWED. Judgment is entered in favor of Defendant City of Springfield and against Plaintiff Maulding Development, LLC, on Count I of the Complaint. The remainder of the Complaint is dismissed for lack of subject matter jurisdiction. All pending motions are denied as moot. This case is closed.

IT IS THEREFORE SO ORDERED.

ENTER: February 18, 2005.

FOR THE COURT:

s/ Jeanne E. Scott
JEANNE E. SCOTT
UNITED STATES DISTRICT JUDGE

Appendix B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

Case Number: **04-3075**

MAULDING DEVELOPMENT, LLC

vs.

CITY OF SPRINGFIELD, et al.

JUDGMENT IN A CIVIL CASE

JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

XX DECISION BY THE COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED pursuant to an order entered by the Honorable Jeanne E. Scott, Defendant City's Motion for Summary Judgment and Dismissal is ALLOWED. Judgment entered in favor of Defendant City of Springfield and against Plaintiff Maulding Development, LLC on Count I of the complaint. The remainder of the Complaint is dismissed for lack of subject matter jurisdiction. All pending motions are denied as moot. This case is closed.

ENTER this 22nd day of February, 2005

JOHN M. WATERS, CLERK

s/ Christy Taylor
BY: DEPUTY CLERK

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION DATED SEPTEMBER 24, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

No. 04-3075

MAULDING DEVELOPMENT, LLC,

Plaintiff,

v.

CITY OF SPRINGFIELD, et al.,

Defendants.

ORDER

JEANNE E. SCOTT, U.S. District Judge:

This matter comes before the Court on Plaintiff Maulding Development, LLC's (Developer) Motion for Summary Judgment (d/e 8) and the Motion for Summary Judgment-Wabash Avenue (d/e 10). The Developer claims that it is entitled to writs of mandamus directing the Defendants City of Springfield (City), Mayor Tim Davlin, and City Council members Frank Edwards, Frank McNeil, Frank Kunz, Chuck Redpath, Joe Bartolomucci, Mark Mahoney, Judy Yeager, Iry Smith, Tom Selinger, and Bruce Strom to approve large-scale development plans and final plats for the Developer's two

proposed warehouse developments. For the reasons set forth below, the Motions are ALLOWED.

STATEMENT OF FACTS

The facts, with one exception, are undisputed.[1] The Developer owns a parcel of real estate located on Wabash Avenue on the west side of the City (Wabash Property). The Developer also has an option to purchase a parcel of real estate near South Grand Avenue (South Grand Property) on the east side of the City. The Developer prepared large-scale development plans to construct warehouse facilities on both of these parcels of property. The plans and final plat for each development meet each and every technical requirement of the ordinances and regulations established by the City. Each of the two planned warehouse developments is within the applicable City zoning restrictions and meets all applicable City and regional planning Commission regulations, including regulations related to traffic, public safety, drainage, lighting, and landscaping. The plans for the South Grand Property development contain no variances. The plans for the Wabash Property development contain a variance, already approved by the City Council, which states that the Developer is not required to design or construct an extension of a certain local street named Ash Grove Road through the development. The City Council refused to grant final approval to the development plans or the final plat for either development project.

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1. *Response to Plaintiff's Motion for Summary Judgment (d/e 15)*, at 2.

Appendix C

The only disputed fact concerns whether the Illinois Department of Transportation (IDOT) and the relevant local highway authority approved the final plat for the Wabash Property development. The plans for the Wabash Property call for access to Wabash Avenue, which is a state highway subject to IDOT's jurisdiction. Ash Grove Road is a roadway under the jurisdiction of a local highway authority. *Response to Plaintiff's Motion for Summary Judgment (d/e 15)*, Exhibit A, *Affidavit of Timothy Sheehan.*[2] The plans for the Wabash Property development do not call for roadway access to Ash Grove Road.

The Developer secured a Highway Permit, District Serial No. 6-28671, from IDOT which identifies the Wabash Property development and states the following:

> This is your authority to locate, construct, and maintain a public road entrance to an industrial park-Wabash Industrial Park.
>
> This is also your authority to locate and construct traffic signals, right turn lanes, storm sewer and all other related construction on the above-described highway in accordance with the attached plans and special provisions.
>
> Any deviation of alignment for the proposed public road requires permission from the District permit office. Upon completion of the project, the petitioner shall submit a set of as-built plans.

Plaintiff's Reply in Support of Summary Judgment (d/e 17), *Affidavit of Steven Walker* and attached IDOT Highway Permit Serial No. 6-28671.

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2. Sheehan's affidavit does not identify the "local highway authority" that has jurisdiction over Ash Grove Road.

Appendix C

ANALYSIS

Counts II and III of the Complaint allege supplemental state law claims for writs of mandamus to compel the Defendants to approve the final plans and plats for the developments. Count II seeks a writ of mandamus to compel approval of the South Grand Property large-scale development plans and final plat. Count III seeks a writ of mandamus to compel approval of the Wabash Property large-scale development plans and final plat. The Developer seeks partial summary judgment on those two counts. At summary judgment, the Developer must present evidence that demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). The Court must consider the evidence presented in the light most favorable to the Defendants. Any doubt as to the existence of a genuine issue for trial is resolved against the Developer. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

Once the Developer has met its burden, the Defendants must present evidence to show that issues of fact remain with respect to an issue essential to their case, and on which they will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. at 322; *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

The Developer is entitled to issuance of a writ of mandamus if it has a clear, affirmative right to relief and the Defendant City officials have the clear authority to comply with the writ. *See Lewis E. v. Spagnolo*, 186 Ill.2d 198, 228, 710 N.E.2d 798, 813 (1999); *Noyola v. Board of Educ. of the City of Chicago*, 179 Ill.2d 121, 123, 688 N.E.2d 81, 86

(1997). To receive mandamus relief, there must be a logical nexus between the Developer's status and the relief sought. *Solomon v. City of Evanston*, 29 Ill.App.3d 782, 789, 331 N.E.2d 380, 386 (1975).

The Developer asserts that it is entitled to writs of mandamus because the large-scale development plans and final plats for both the Wabash Property and the South Grand Property developments meet all the requirements of the City's ordinances and other regulations. Municipal governments may adopt zoning and other development ordinances to guide and regulate development. The Developer asserts that if a developer prepares development plans that comply with all such laws, regulations and ordinances, then the City Council has a ministerial obligation to approve the proposed development. *People ex rel. J.C. Penney Properties, Inc. v. Village of Oak Lawn*, 38 Ill.App.3d 1016, 1019, 349 N.E.2d 637 (1976), *citing Hoerrmann v. Wabash Ry. Co.*, 309 Ill. 524, 535, 141 N.E. 289, 293 (1923) (mandamus will lie to compel approval of a subdivision plat by a village board of trustees because such approval is a ministerial act if the plat complies with all statutes and ordinances). *Accord, People ex rel. First National Bank and Trust Co. of Evanston v. Village of Deerfield*, 50 Ill.App.2d 349, 200 N.E.2d 120 (1964). The City does not challenge the Developer's statement of Illinois law on this issue.

The Developer has submitted affidavits stating that the large-scale development plans and final plats for the South Grand Property and the Wabash Property comply with all applicable laws, ordinances, and regulations. The Developer, therefore, argues that it should be entitled to the mandamus relief sought.

Appendix C

The City argues that the Developer has no right to mandamus relief because the Developer: (1) does not have a logical nexus to the relief sought for the South Grand Property, and (2) has failed to secure approval of the final plat of the Wabash Property development by IDOT and the local highway authority. The competent evidence does not support the City's position.

A. *South Grand Property*

The Developer has an option to purchase the South Grand Property and has prepared large-scale development plans and a final plat that comply with all applicable statutes, ordinances, and regulations. The Defendants do not dispute any of these facts, and do not dispute Illinois law would authorize a writ of mandamus to the Developer in this case if it had a logical nexus to the relief sought. The Defendants only argue that the Developer does not have a logical nexus to the relief sought because it only has an option to purchase the property.

The Developer's option to purchase the South Grand Property gives it a logical nexus to the relief sought. A logical nexus means some personal interest that will be affected by the relief sought. *Solomon*, 331 N.E.2d at 386. The Developer does not need a legal interest or property interest that would be affected by mandamus relief. *Id.* The holder of an option to purchase real estate can specifically enforce the option against the optionee. *In re Frayser's Estate*, 401 Ill. 364, 82 N.E.2d 633, 639 (1948); *Fried v. Barad*, 175 Ill.App.3d 382, 387, 530 N.E.2d 93, 96 (1988). Thus, if mandamus relief is granted, the Developer has the right to specifically enforce

the option and complete the project. The Developer, therefore, has a personal interest that would be affected by the mandamus relief sought. The Developer has a logical nexus to the relief sought. The Developer is entitled to partial summary judgment on Count II.

B. *Wabash Property*

The Developer's affidavits establish that it owns the Wabash Property and has prepared large-scale development plans and a final plat that comply with all applicable statutes, ordinances, and regulations. The Defendants dispute only one fact. The Defendants claim that the Developer did not comply with the Illinois Plat Act because the Wabash Property final plat was not approved by IDOT or the local highway authority having jurisdiction over Ash Grove Road.

The Illinois Plat Act states, in part:

> Neither the city council of the city, the board of trustees of the village or town or the officer designated by them, or the county board of the county shall approve such plat, unless, in addition to any other requirements of such counsel, . . . the plat has been approved in writing (i) . . . by the Illinois Department of Transportation with respect to roadway access where such access is to a state highway, (ii) by the relevant local highway authority with respect to all other roadway access, ...

765 ILCS 205/2.

Appendix C

The Developer's affidavits and the Highway Permit show that IDOT approved the Wabash Property development plans and roadway access to Wabash Avenue. The Defendants submit minutes from the City Council meeting which recite that the City's Director of Public Works Richard Berning stated at the Council meeting that IDOT representatives wrote a letter opposing the Wabash Property development. The letter was not submitted to the Court. The recitation in the minutes of Berning's statement of the content of the IDOT letter is inadmissible hearsay. *Fed. R. Evid.* 502.[3] Such evidence is not competent to oppose a motion for summary judgment. *Fed. R. Civ. P.* 56(e). The Defendants presented no other evidence to support its claim that IDOT did not approve highway access for the Wabash Property development. The only competent evidence shows that the Developer complied with this portion of the Plat Act.

The Defendants argue that the Developer failed to secure approval by the local highway authority that has jurisdiction over Ash Grove Road. The Developer did not need such approval in this case. The Plat Act only requires approval by the local highway authority if the property has access to the local road. The Wabash Property development is not designed to have access to Ash Grove Road. The City Council approved a variance which relieved the Developer of any obligation to extend Ash

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3. The City Clerk authenticated the minutes as a public record which would make the minutes themselves admissible. *Fed. R. Evid.* 803(8). The City Clerk's affidavit does not establish that Berning's statement about the content of the IDOT letter is excepted from the hearsay rule. *Fed. R. Evid* 805. The Developer responded with an unauthenticated tape and transcript of the meeting. With no foundation, the tape and transcript are also not competent evidence for summary judgment purposes. *Fed. R. Civ. P.* 56(e).

Grove Road through its property. Since the Wabash Property development plan would have no access to Ash Grove Road, the Developer was not obligated under the Plat Act to secure any approval from any local highway authority. The Developer has complied with the Plat Act. The Defendants raise no other challenge to the Developer's request for summary judgment. The Developer, therefore, is entitled to partial summary judgment on Count III.

THEREFORE, the Motion for Summary Judgment (d/e 8) and the Motion for Summary Judgment-Wabash Avenue (d/e 10) are ALLOWED. Partial Summary Judgment is entered in favor of Maulding Development, LLC, and against the City of Springfield, Mayor Tim Davlin, and City Council members Frank Edwards, Frank McNeil, Frank Kunz, Chuck Redpath, Joe Bartolomucci, Mark Mahoney, Judy Yeager, Iry Smith, Tom Selinger, and Bruce Strom. The Court hereby issues a writ of mandamus directing the Springfield City Council to approve Maulding Development, LLC's final large-scale development plans and final plats for both the South Grand Avenue Property and the Wabash Property developments.

IT IS THEREFORE SO ORDERED.

ENTER: September 24, 2004.

FOR THE COURT:

s/ Jeanne E. Scott
JEANNE E. SCOTT
UNITED STATES DISTRICT JUDGE